

MAY 13 2016

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MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODYBY: JULIA C. DUDLEY, CLERK
DEPUTY CLERK

United States District Court		District
Name (under which you were convicted): Robert Terzel-Jermaine White		Docket or Case No.: 16-530
Place of Confinement: FCC Petersburg Virginia	Prisoner No.: 11531-084	
UNITED STATES OF AMERICA		Movant (include name under which convicted) v. Robert Terzel-Jermaine White

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

United States District Court P.O. Box 1234 Roanoke, VA(b) Criminal docket or case number (if you know): 7:12-CR-00010

2. (a) Date of the judgment of conviction (if you know):
- 7-17-2012

(b) Date of sentencing: 7-17-2012

3. Length of sentence:
- 96 months

4. Nature of crime (all counts):
- Possession to Distribute Cocaine Base 841(a)(1)
-
- (b)(1)(c)

5. (a) What was your plea? (Check one)

(1) Not guilty ☐(2) Guilty ☒(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐No ☒

8. Did you appeal from the judgment of conviction?

Yes ☐No ☒

9. If you did appeal, answer the following:

- (a) Name of court: _____
- (b) Docket or case number (if you know): _____
- (c) Result: _____
- (d) Date of result (if you know): _____
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: United States District Court
- (2) Docket or case number (if you know): 7:12-CR-00010
- (3) Date of filing (if you know): Cannot recall the date
- (4) Nature of the proceeding: Sentencing Reduction
- (5) Grounds raised: To Reduce Sentence - A Retroactive Amendment

18 U.S.C.A. Section 3582(c)(2) Crack Cocaine Sentencing
Guideline.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: United States District Court

(2) Docket of case number (if you know): 07:05-CR-00048

(3) Date of filing (if you know): Cannot Recall the Date

(4) Nature of the proceeding: Vacate to set Aside Correct Sentence

(5) Grounds raised: Ineffective Assistance of Counsel Deprived Petitioner to Argue his Issues of Section 4B1.1 (a) Career Offender On Direct Appeal

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition:

Yes ☐

No ☒

(2) Second petition:

Yes ☐

No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

I had no one to assist me with my case. I've been going to school to learn how to read and write so I can be able to understand more about my case, and the Laws that became retroactive.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Johnson v United States 135 S ct. 2551 (2015)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

In light of Johnson the Petitioner is not a career offender, and his sentence violates due process of law because he does not have two prior convictions that qualify as predicate offenses under U.S. Sentencing Guidelines Manual § 4B1.2 (a) (2015). The Sentencing Guidelines definition of "crime of violence" contains a residual clause that is identical to the Armed Career Criminal clause that was the subject of Johnson. See USSG § 4B1.2 (a)(2). The Violent Crime Must Satisfy the Definition of crime of Violence: Assault and Battery; See: Attached Exhibit.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

Never did a Direct Appeal. Nor Did petitioner do a 2255 pertaining to Johnson v United States

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: *At the time of Petitioners first Direct Appeal and first Section 2255, Johnson v. United States was not settled law, and it would have been clearly contrary to argue a substance law that was not yet made Retroactive.*

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: *Ground One was NOT Retroactive law at the time of Petitioners Conviction in 2012.*

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

X

(a) At the preliminary hearing:

Randy Carraigil Public Defender

(b) At the arraignment and plea:

(c) At the trial:

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

The reason why Petitioner was given the opportunity to file a second or successive 2255 application was because the Supreme Court handed down that the Guidelines, a residual clause that Johnson applies retroactively to the Career Offender Guidelines section 4B1.1, and

(3) The date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

Immediate Release, Vacate and Remand
or any other relief to which movant may be entitled.

NONE
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 5-10-16
(month, date, year)

Executed (signed) on 5-11-16 (date)

Robert White
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Deposits



Inmate Reg #: 0531084
 Inmate Name: WHITE, ROBERT
 Report Date: 05/06/2016
 Report Time: 11:34:47 AM

Current Institution: Petersburg - EC C
 Housing Unit: PEM-A-5
 Living Quarters: A01-0330

<u>Date/Time</u>	<u>Transaction Type</u>	<u>Amount</u>	<u>Ref#</u>	<u>Sender Last Name</u>	<u>Sender Zip</u>
5/6/2016 6:20:36 AM	Payroll - IPP	\$62.85	RIPP0416		
4/27/2016 7:07:55 AM	Western Union	\$100.00	33316118	JONES	09366
4/21/2016 9:05:48 PM	Western Union	\$30.00	33316112	GLASPIE	24153
4/8/2016 12:06:18 PM	Western Union	\$40.00	33316099	GLASPIE	24153
4/6/2016 6:08:07 AM	Payroll - IPP	\$62.85	RIPP0316		
3/4/2016 8:08:39 PM	Western Union	\$40.00	33316064	GLASPIE	24153
3/4/2016 9:39:45 AM	Payroll - IPP	\$62.85	RIPP0216		
2/5/2016 7:04:20 AM	Payroll - IPP	\$62.85	RIPP0116		
2/5/2016 7:04:17 AM	Payroll - Educ Ach Award	\$25.00	REDU0116		
1/29/2016 6:08:57 PM	Western Union	\$50.00	33316029	KINARD	22172
1/28/2016 7:06:47 AM	Money Gram	\$12.00	33416028	TGREFUND	23804
1/8/2016 7:07:51 PM	Western Union	\$100.00	33316008	KINARD	22172
1/8/2016 7:13:37 AM	Payroll - IPP	\$57.85	RIPP1215		
12/31/2015 3:10:35 PM	Western Union	\$50.00	33315365	JONES	24019
12/13/2015 3:07:45 PM	Western Union	\$100.00	33315347	KINARD	22172
12/8/2015 7:08:21 PM	Western Union	\$40.00	33315342	GLASPIE	24153
12/4/2015 6:58:28 AM	Payroll - IPP	\$57.85	RIPP1115		
11/25/2015 9:07:39 PM	Western Union	\$30.00	33315329	GLASPIE	24153
11/3/2015 8:37:46 AM	Payroll - IPP	\$52.85	RIPP1015		
10/27/2015 8:08:43 PM	Western Union	\$20.00	33315300	GLASPIE	24153
10/5/2015 8:30:01 AM	Payroll - IPP	\$52.85	RIPP0915		
9/12/2015 2:07:34 PM	Western Union	\$100.00	33315255	GLASPIE	24153
9/4/2015 11:24:15 AM	Payroll - IPP	\$52.85	PIPP0815		

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